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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,695	12/22/2006	Markus Kilian	KIL3002 /FJD	4321
23364 7590 12/08/2008 BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314-1176				
EXAMINER				
WACHSMAN, HAL D				
ART UNIT		PAPER NUMBER		
2857				
MAIL DATE		DELIVERY MODE		
12/08/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/550,695

Applicant(s)

KILIAN, MARKUS

Examiner

Hal D. Wachsmen

Art Unit

2857

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8, 9, 11 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8, 9, 11 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 September 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. The reply filed 9-11-08 amends the title to read "METHOD FOR DETERMINING A MEASURING POINT IN TIME *FOR A FIELD DEVICE AND CORRESPONDING FIELD DEVICE*". However, there is ambiguity in this title with respect to whether the "corresponding field device" is the same field device for which a measuring point in time is being determined or if this is referring to a second, different field device for which a measuring point in time is also being determined. Also, the Transmittal letter to the U.S. for filing under 35 U.S.C. 371 had block 14 checked for an application data sheet. However, there is no application data sheet in the image file wrapper. Appropriate explanation/correction is required.
2. The reply filed 9-11-08 on page 2 contains an insertion of a statement of continuing data for page 1, between the title and the first paragraph. However, this insertion is improper under 37 C.F.R. 1.121 because the text of this new paragraph has been underlined. In addition, this statement of continuing data does not also refer to the EPO 103 15 164.8 application filed 04/02/2003. Appropriate correction is required.
3. In claim 8, line 18, a right parenthesis is missing around the cited variable for the determined measuring point in time. In claim 8, line 19, a right parenthesis is missing around the cited variable for the determined following communication point in time. This same type of problem also occurs in claim 14, line 16. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 8, 9, 11 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 8, lines 9-11, the same variable is being used to represent "a preceding communication point in time" and "another communication point in time". This same type of problem also occurs in claim 14, line 15. Claim 8, line 15, cites "the point in time of measurement" however there is ambiguity with respect to whether this is the same as "the measuring point in time" in line 13 of the claim and if they are the same it is not clear why the variables representing these items are different. The terms "as shortly as possible" in claims 8 and 14 are relative terms which renders the claims indefinite. The term "as shortly as possible" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The terms/expressions "be as shortly as possible" and "lies as shortly as possible" constitute relative terminology in which the scope of these terms are not clear. Claim 8, line 16, cites "the approximately determined communication point in time" however the antecedent basis is "approximately determined following communication point in time". Claim 8, line 17, cites "the reporting of the measured value" which lacks clear antecedent basis. The variable used to represent

"approximately determined following communication point in time" in the last line of claim 8 is different from that used earlier in the claim to represent this. The preamble of claim 14 cites "A field device An apparatus for determining..." in which there is confusion with respect to what this was intended to be. Claim 14, line 14, cites "said two preceding points in time" which it appears should be "said two preceding communication points in time".

6. Applicant's arguments with respect to claims 8, 9, 11 and 14 have been considered but are moot in view of the new ground(s) of rejection.
7. No claims are allowed.
8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hal D. Wachsman whose telephone number is 571-272-2225. The examiner can normally be reached on Monday to Friday 7:00 A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eliseo Ramos-Feliciano can be reached on 571-272-7925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hal D Wachsman/
Primary Examiner
Art Unit 2857

December 2, 2008